

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

ROBERT EARL KIRKLAND,

Movant,

v.

CIVIL ACTION NO. 5:03-0296

CRIMINAL ACTION NO. 5:01-00149-01

UNITED STATES OF AMERICA,

Respondent.


ORDER

This action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the Court deny Movant's Motion to Vacate Sentence and Conviction with respect to the remaining claim on ineffective assistance of counsel based on counsel's failure to argue for a downward departure under U.S.S.G. § 5K2.13 (Document No. 48), dismiss this action and remove it from the docket of this Court. The Court previously adopted the findings and recommendation but set that aside when Movant requested an extension of the objection period, claiming he had not received court documents in a timely manner. Despite two extensions of time to object, the Movant filed no substantive objection to the Magistrate Judge's findings and recommendation but moved for reconsideration of his motion for a psychiatric exam and submitted a copy of his Social Security disability ruling. The Court **DENIES** [Doc. 73] this motion as well.

Accordingly, the Court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and **DENIES** Movant's Motion to Vacate Sentence and Conviction with respect to the remaining claim on ineffective assistance of counsel based on counsel's failure to argue for a downward departure under U.S.S.G. § 5K2.13 (Document No. 48), **DISMISSES** this action and **REMOVES** it from the docket of this Court. The Court further **DENIES** Movant's Motion for Reconsideration (#73) finding that it presented no new argument or basis not already rejected by the Court

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented parties.

ENTER: December 13, 2006



ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE